

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF NORTH CAROLINA  
SOUTHERN DIVISION  
Case No 7:14-CV-00157-D**

|                 |   |                                   |
|-----------------|---|-----------------------------------|
| CTB, INC.,      | ) | <b>PLAINTIFF'S MOTION FOR</b>     |
|                 | ) | <b>SUMMARY JUDGMENT ON</b>        |
| Plaintiff,      | ) | <b>DEFENDANT'S SECOND, FIFTH,</b> |
|                 | ) | <b>SIXTH, AND SEVENTH</b>         |
| v.              | ) | <b>AFFIRMATIVE DEFENSES AND</b>   |
| HOG SLAT, INC., | ) | <b>FOR PARTIAL SUMMARY</b>        |
|                 | ) | <b>JUDGMENT ON DEFENDANT'S</b>    |
| Defendant.      | ) | <b>COUNTERCLAIMS</b>              |

Plaintiff CTB, Inc. (“CTB”), by counsel, moves this Court to enter a summary judgment in favor of CTB and against Defendant HOG SLAT, INC. (“HOG SLAT”) on HOG SLAT’s Second, Fifth, Sixth, and Seventh Affirmative Defenses and enter a partial summary judgment in favor of CTB and against HOG SLAT on HOG SLAT’s Counterclaims to the extent the Counterclaims rely on the Second, Fifth, Sixth, and Seventh Affirmative Defenses.

1. CTB sued HOG SLAT for trademark infringement and unfair competition for HOG SLAT’s manufacture and sale of poultry feeders indistinguishable from CTB’s poultry feeders.

2. CTB asserts causes of action under the Lanham Act for infringement of United States Trademark Registrations Nos. 4,116,988 and 4,290,371. CTB also asserts causes of action under the Lanham Act for unfair competition and causes of action for common-law trademark infringement, common-law unfair competition, and violation of a North Carolina deceptive trade practices statute.

3. HOG SLAT asserted, among other boilerplate defenses, the following Affirmative Defenses:

a. Second Affirmative Defense: Laches, Waiver, Acquiescence, Estoppel.

- b. Fifth Affirmative Defense: Inequitable Conduct and Fraud on the United States Patent and Trademark Office—Registration No. 4,116,988;
- c. Sixth Affirmative Defense: Inequitable Conduct and Fraud on the United States Patent and Trademark Office—Registration No. 4,290,371; and
- d. Seventh Affirmative Defense: Abandonment.

4. HOG SLAT also asserted Counterclaims seeking cancellation of CTB's trademark registrations, based in part on HOG SLAT's allegations in its Second, Fifth, Sixth, and Seventh Affirmative Defenses.

5. An element of the Second Affirmative Defense is that proof that CTB unreasonably delayed asserting its rights. There is no evidence to submit to a jury that CTB unreasonably delayed. There is no genuine issue of material fact on this defense and CTB is entitled to judgment as a matter of law on the Second Affirmative Defense.

6. An element of the Fifth and Sixth Affirmative Defenses is proof that CTB intended to deceive the Trademark Office. CTB did not, in fact, intend to deceive the Trademark Office and there is not enough evidence to submit to a jury on CTB's alleged intent to deceive. There is no genuine issue of material fact on these defenses and CTB is entitled to judgment as a matter of law on the Fifth and Sixth Affirmative Defenses.

7. An element of the Seventh Affirmative Defense is proof that CTB abandoned its trademarks. CTB did not abandon its trademarks. There is no genuine issue of material fact on this defense and CTB is entitled to judgment as a matter of law on the Seventh Affirmative Defense.

8. CTB is also entitled to a partial summary judgment on HOG SLAT's Counterclaims to the extent the Counterclaims rely on the same defenses asserted in the Second,

Fifth, Sixth, and Seventh Affirmative Defenses. HOG SLAT may proceed on its Counterclaims to the extent the Counterclaims allege other defenses.

9. CTB submits a Statement of Material Facts and a Memorandum in support of this Motion for Summary Judgment.

WHEREFORE, CTB respectfully moves this Court to enter a summary judgment in its favor and against HOG SLAT on HOG SLAT's Second, Fifth, Sixth, and Seventh Affirmative Defenses and to enter a partial summary judgment in favor of CTB and against HOG SLAT on HOG SLAT's Counterclaims to the extent the Counterclaims rely on the Second, Fifth, Sixth, and Seventh Affirmative Defenses.

Dated January 20, 2017

Respectfully submitted,

CLARK HILL PLC

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## CERTIFICATE OF SERVICE

I certify that, on January 20, 2017, I electronically filed the foregoing PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT ON DEFENDANT'S SECOND, FIFTH, SIXTH, AND SEVENTH AFFIRMATIVE DEFENSES AND FOR PARTIAL SUMMARY JUDGMENT ON DEFENDANT'S COUNTERCLAIMS with the Clerk of the Court using the CM/ECF system.

The aforementioned documents will be served on the following counsel of record for Hog Slat, Incorporated in accordance with the Federal Rules of Civil Procedure and the Local Rules of this Court:

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Dated: January 20, 2017.

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